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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,500	10/24/2003	Peter W. Carhuft	88265-7670	1144

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WINSTON & STRAWN LLP  
PATENT DEPARTMENT  
1700 K STREET, N.W.  
WASHINGTON, DC 20006

EXAMINER

MARKOFF, ALEXANDER

ART UNIT

PAPER NUMBER

1792

NOTIFICATION DATE

DELIVERY MODE

06/25/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@winston.com  
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### Office Action Summary

**Application No.**

10/692,500

**Applicant(s)**

CARHUFF ET AL.

**Examiner**

Alexander Markoff

**Art Unit**

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The applicants amended the independent claims to recite conducting the cleaning operation "without having to connect the cleansing fluid supply to the dispensing line each time cleaning is needed".

The original disclosure fails to support such limitation.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite because the term "the dispensing line" in the independent claims lacks proper antecedent basis.

***Response to Arguments***

5. Applicant's arguments filed 3/23/09 have been fully considered but they are not persuasive.

The applicants argue that the rejection made under 35 USC 112(1) is not proper. The applicants allege that the support for the claimed limitation is present at paragraph [0063] of the original specification.

The examiner disagrees.

The referenced paragraph states:

*[0063] Dispenser 100 includes interface connection 233 that is configured to establish a supply of a milk based fluid 211a from a food source such as milk based fluid reservoir 211, a mixing device 400 configured to receive the milk based fluid 211a and prepare a milk based product, a nozzle 500 in fluid association with the mixing device 400 to dispense the milk based product, a food conduit or fluid path 600 configured to direct the milk based product to flow from the interface connection 233 through the mixing device 400 to the dispensing mechanism, such as nozzle 500, and a cleansing mechanism 700 located in the dispenser 100 and including a supply 987a of cleansing fluid and a flowpath 800 which is configured to deliver the cleansing fluid to or through the fluid path 600. Cleansing mechanism 700 is preferably at least partially or completely contained within housing 1500 of dispenser 100 (See FIG. 3). Even more preferably, it is not necessary to connect an external source of cleansing fluid (e.g., detergent) to dispenser 100 to perform the cleansing operation.*

It appears that the applicants rely on the last sentence of the paragraph. The applicants particularly cited the following: *it is not necessary to connect an external*

*source of cleansing fluid (e.g., detergent) to dispenser 100 to perform the cleansing operation.* However, the referenced sentence does not support the limitation **“without having to connect the cleansing fluid supply to the dispensing line each time cleaning is needed”**.

The fluid supply is not an external source. The claims require “the cleansing fluid supply” being a part of the dispenser.

The referenced deficiency also raises a question of enablement, since the cleansing fluid supply must be connected to the parts to be cleaned to enable cleaning.

No rejection to address the potential enablement issue has been this time because the term “the dispensing line” lacks proper antecedent basis and it is not clear what is referenced by the term.

It is noted that the applicants stated that they amended the claims to provide a proper antecedent basis for the term “the dispensing line”. However, the applicant’s statement contradicts to the language of the amended claims. The claims were not amended to provide proper antecedent basis for the referenced term.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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